

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of	)	
LUCY A. MIDDLETON,	)	NOTICE OF INTENTION TO
individually, and as an	)	PROHIBIT FROM FURTHER
institution-affiliated party of	)	PARTICIPATION, NOTICE OF
YAMPA VALLEY BANK	)	ASSESSMENT OF CIVIL MONEY
STEAMBOAT SPRINGS, COLORADO	)	PENALTY, FINDINGS OF FACT, AND
(INSURED STATE NONMEMBER BANK)	)	CONCLUSIONS OF LAW, ORDER TO
	)	PAY, AND NOTICE OF HEARING
	)	FDIC-10-366e
	)	FDIC-10-368k

The Federal Deposit Insurance Corporation (FDIC), has determined that LUCY A. MIDDLETON (Respondent), as an institution-affiliated party of Yampa Valley Bank, Steamboat Springs, Colorado (Bank), has directly or indirectly participated or engaged in violations of law, unsafe or unsound banking practices, and acts, omissions, or practices, which constitute breaches of her fiduciary duty as a senior officer of the Bank; that the Bank has suffered financial loss or other damage as the result of Respondent's practices; that the Respondent has received financial gain or other benefit by reason of such violations, practices, and breaches of fiduciary duty; and, that such violations, practices, and breaches of fiduciary duty demonstrate the Respondent's personal dishonesty and her willful or continuing disregard for the safety or soundness of the Bank.

Further, the FDIC has determined that Respondent recklessly participated or engaged in unsafe and unsound practices and breached her fiduciary duty, and these practices and breaches constitute a pattern of misconduct that caused more than minimal loss to the Bank and resulted in pecuniary gain or other benefit to Respondent.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against the Respondent under the provisions of section 8(e) of the Federal Deposit Insurance Act (Act), 12 U.S.C. § 1818(e), prohibiting the Respondent from further participation in the conduct of the affairs of the Bank or any other insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. §1818(e)(7)(D).

Further, the FDIC institutes this proceeding for the assessment of a civil money penalty against Respondent pursuant to the provisions of section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION (NOTICE TO PROHIBIT), pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, and issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING (NOTICE OF ASSESSMENT), pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. In support thereof, the FDIC makes the following Findings of Fact and Conclusions of Law.

## **FINDINGS OF FACT**

### **JURISDICTION AND BACKGROUND INFORMATION**

1. At all times pertinent to this proceeding, the Bank was a banking institution existing and doing business under the laws of the State of Colorado, having its principal place of business at Steamboat Springs, Colorado. The Bank is and has been, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the FDIC Rules and Regulations, 12 C.F.R. Chapter III, and the laws of the State of Colorado.

2. On or about March 20, 2006, the Respondent was appointed Assistant Vice President, Operations Officer, and Bank Secrecy Act Compliance Officer of the Bank and continued to serve in these capacities at all times pertinent to the charges herein.

3. At all times pertinent to the charges herein, the Respondent was an "institution-affiliated party" as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

4. The FDIC is the "appropriate Federal banking agency" with respect to the Bank within the meaning of section 3(q)(3) of the Act, 12 U.S.C. § 1813(q)(3), and has jurisdiction over the Bank, the Respondent, and the subject matter of this proceeding.

5. At all times pertinent to the charges herein, specifically between August 7, 2006 and September 8, 2009, the Respondent, while acting as the Bank's Assistant Vice President, Bank Secrecy Act Compliance Officer, and Operations Officer, exercised management and control over the Bank's automated teller system and the Bank's cash on

hand including, the Bank's vault cash and teller cash.

6. While acting in the capacities noted in Paragraph 5 above, and between August 7, 2006 and September 8, 2009, Respondent engaged in the following misconduct:

a. Respondent repeatedly made unauthorized withdrawals of cash from the Bank's automated teller machine (ATM) and then transferred these unauthorized cash withdrawals from the Bank's ATM account into her personal account.

b. On numerous other occasions, Respondent made unauthorized credits of portions of the Bank's operating cash to one of the Bank's operating accounts, withdrew these transferred amounts from the Bank's operating accounts in cash, and then kept the cash for her personal use.

c. On other occasions when balancing her cash drawer, Respondent violated normal teller operating procedures when she counted her own cash, intentionally by-passed the Bank's dual control system for verification of the cash count by another teller, and removed and kept a portion of the Bank's cash for her personal use, then falsified the Bank's cash count records to conceal her unauthorized removal of the cash.

### **CONCLUSIONS OF LAW**

#### **A. GROUNDS FOR AN 8(e) PROHIBITION ORDER AGAINST RESPONDENT**

7. Respondent's conduct of misappropriating the Bank's funds as described above, constitutes an unsafe or unsound practice, in that her conduct was a misappropriation of the Bank's assets, which in turn reduced the Bank's cash assets, causing the Bank's books and records to be materially misstated.

8. Respondent also failed to act with the utmost care in safeguarding the Bank's funds entrusted to her, and in carrying out the other responsibilities assigned to her as a Bank officer, as her fiduciary duty to the Bank obligated her to do. Her actions therefore constitute a breach of her fiduciary duty to the Bank.

9. As a result of the Respondent's misconduct, the Bank was damaged in the amount of approximately \$92,000. This figure represents the total sum of the nearly \$77,000 that Respondent wrongfully took from the Bank during the period of her misconduct, as alleged above, and the approximate \$15,000 in cash that Respondent took from and then voluntarily returned to the Bank after her misconduct was discovered and her employment at the Bank was terminated.

10. As a further and proximate result of the misconduct described above, the Respondent gained approximately \$92,000; the sum of money she wrongfully took from the Bank during the period of her misconduct.

11. Respondent's misconduct demonstrates personal dishonesty in that her acts, as herein alleged, were perpetrated with the intention of misappropriating the Bank's cash, without regard to the impact that her conduct would have on the Bank, and she repeatedly falsified the Bank's records to conceal her misconduct.

12. From the nature and duration of the misconduct described above, the Respondent also manifested a willful disregard for the financial impact that her misconduct could have on the Bank.

13. Respondent engaged in the above-described misconduct on a regular basis for a period of over three years, thus demonstrating not only a willful but also a continuing disregard for the safety and soundness of the Bank.

14. Respondent's above-described misconduct was a part of a pattern of misconduct, which caused or was likely to cause more than a minimal loss to the Bank and resulted in pecuniary gain or other benefit to the Respondent. Respondent's misconduct, as described above, was also part of a pattern of misconduct involving misappropriation of the Bank's funds on numerous occasions over a period of years.

15. The above-alleged acts and omissions justify the issuance of an Order of Prohibition against the Respondent pursuant to the provisions of Section 8(e) of the Act, 12 U.S.C. § 1818(e).

**B. GROUNDS FOR AN 8(i) NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY AGAINST RESPONDENT**

16. Paragraphs 1 through 14 are restated and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for the purposes of this NOTICE OF ASSESSMENT.

17. By reason of the acts and omissions herein alleged, Respondent has recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank and has breached her fiduciary duties of care and loyalty to the Bank within the meaning of section 8(i)(2)(B)(i)(II)-(III) of the Act, 12 U.S.C. § 1818(i)(2)(B)(i)(II)-(III).

18. By reason of the acts and omissions herein alleged, Respondent's practices and breaches were part of a pattern of misconduct within the meaning of section 8(i)(2)(B)(ii)(I) of the Act, 12 U.S.C. § 1818(i)(2)(B)(ii)(I).

19. By reason of the acts and omissions herein alleged, Respondent's practices and breaches caused or were likely to cause more than a minimal loss to the Bank within the meaning of section 8(i)(2)(B)(ii)(II) of the Act, 12 U.S.C. § 1818(i)(2)(B)(ii)(II).

20. By reason of the acts and omissions herein alleged, Respondent's practices

and breaches resulted in pecuniary gain or other benefit to Respondent within the meaning of section 8(i)(2)(B)(ii)(III) of the Act, 12 U.S.C. § 1818(i)(2)(B)(ii)(III).

**NOTICE OF HEARING ON NOTICE OF INTENTION TO PROHIBIT  
FROM FURTHER PARTICIPATION**

21. Notice is hereby given that the hearing on the NOTICE TO PROHIBIT shall commence at Denver, Colorado, sixty (60) days from the date of service of this NOTICE TO PROHIBIT by Respondent, or on such date or at such place as the parties to this action and the Administrative Law Judge assigned to hear this matter may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether a permanent order should be issued to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

22. The hearing will be public and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication (OFIA) pursuant to 5 U.S.C. § 3105. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

23. Respondent is hereby directed to file an answer to this NOTICE TO

PROHIBIT within twenty (20) days from the date of service, as provided by section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19. An original and one copy of all papers filed in this proceeding shall be served upon the Office of Financial Institutions Adjudication, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Copies of all papers filed in this proceeding shall be served upon Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., F-1058, Washington, D.C., 20429; A.T. Dill, III, Assistant General Counsel, Supervision Branch, Federal Deposit Insurance Corporation, 550 17th Street, N.W., MB-3020, Washington, D.C., 20429; and, upon Stephen C. Zachary, Regional Counsel (Supervision), Federal Deposit Insurance Corporation, Legal Division, 1601 Bryan Street, 37<sup>th</sup> Floor, Dallas, Texas, 75201. Pursuant to 12 C.F.R. § 308.10(b)(4), all documents required to be filed in this matter, excluding documents produced in response to a discovery request pursuant to 12 C.F.R. § 308.25 and 12 C.F.R. § 308.26, shall be filed with the OFIA. All parties are encouraged to file documents electronically with OFIA at [ofia@fdic.gov](mailto:ofia@fdic.gov).

### **ORDER TO PAY AND NOTICE OF HEARING**

Respondent's reckless engagement in unsafe or unsound practices and her breaches of fiduciary duty, which constitute a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank and resulted in pecuniary gain or other benefit to Respondent, pursuant to the provisions of section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B). After taking into account the appropriateness of the penalty



with respect to the size of Respondent's financial resources and good faith, the gravity of the Respondent's practices, her history of previous unsafe or unsound practices, and such other matters as justice may require, it is:

ORDERED that a penalty in the amount of \$25,000, be, and hereby is, assessed against Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

FURTHER ORDERED that the effective date of this ORDER TO PAY be, and hereby is, stayed until 20 days after the date of service of the NOTICE OF ASSESSMENT on Respondent, during which time Respondent may file an answer and request a hearing on the NOTICE OF ASSESSMENT pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19. An original and one copy of the answer, any such request for hearing, and all documents in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500, pursuant to section 308.10 of the FDIC Rules, 12 C.F.R. § 308.10. Copies of all papers filed in this proceeding shall also be served upon Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., F-1058, Washington, D.C. 20429; A.T. Dill, III, Assistant General Counsel, Supervision Branch, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., MB-3020, Washington, D.C., 20429; and Stephen C. Zachary, Regional Counsel, Federal Deposit Insurance Corporation, 1601 Bryan Street, 37<sup>th</sup> Floor, Dallas, Texas, 75201. Pursuant to 12 C.F.R. § 308.10(b)(4), all documents required to be filed in this matter, excluding documents produced in response to a discovery request pursuant to 12 C.F.R. § 308.25 and 12 C.F.R. § 308.26, shall be filed with the OFIA. All parties are encouraged to file

documents electronically with OFIA at [ofia@fdic.gov](mailto:ofia@fdic.gov).

IF THE RESPONDENT FAILS TO FILE A REQUEST FOR A HEARING WITHIN TWENTY (20) DAYS OF THE SERVICE OF THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY ON HER, THE PENALTY ASSESSED AGAINST HER PURSUANT TO THE ORDER TO PAY WILL BE FINAL AND UNAPPEALABLE PURSUANT TO SECTION 8(i)(e)(ii) OF THE ACT, 12 U.S.C. § 1818(i)(e)(ii), AND SHALL BE PAID WITHIN SIXTY (60) DAYS AFTER THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY IS SERVED ON HER.

IT IS FURTHER ORDERED that if Respondent requests a hearing with respect to the charges alleged in the NOTICE OF ASSESSMENT, the hearing shall commence sixty (60) days from the date of receipt of this NOTICE OF ASSESSMENT at Denver, Colorado, or on such other date or at such place upon which the parties to this proceeding and the Administrative Law Judge shall mutually agree.

Pursuant to delegated authority.

Dated at Washington, D.C., this 14<sup>th</sup> day of Decemeber 2010.

/s/  
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Serena L. Owens  
Associate Director  
Division of Supervision and Consumer  
Protection